

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD**

**TRACY L. WALKER, as
Personal Representative of the
Estate of LESTER J. WALKER, JR.,**

Plaintiff,

v.

Civil Action No. 1:15-02319

THE KAPLAN TRUCKING CO.,

Defendant.

**AGREED ORDER APPROVING AMENDED PETITION TO
COMPROMISE AND SETTLE WRONGFUL DEATH CLAIM AND
FOR APPROVAL OF DISTRIBUTION OF SETTLEMENT PROCEEDS**

On March 20, 2017, came the Petitioner, Tracy L. Walker, individually, and in her Capacity as the Administratrix of the Estate of Lester J. Walker, Jr., in person and by counsel, J. Ryan Stewart of Bailey Javins & Carter, LC, pursuant to an Amended Petition to Compromise and Settle Wrongful Death Claim and for Approval of Distribution of Settlement Proceeds [Doc. 80] (hereinafter “Amended Petition”). Also appearing at the hearing was attorney David A. Bosak of Lewis Brisbois Bisgaard & Smith, LLP, counsel for the defendant, The Kaplan Trucking Company.

Upon careful consideration of the testimony, the pleadings and the record appearing before the Court, the Court finds the following:

1. Tracy Walker was duly appointed as the personal representative of the Estate of Lester J. Walker on April 1, 2013, by the Fayette County, Pennsylvania Register of Wills, and is acting as such at this time.

2. On March 1, 2013, Lester Walker, Petitioner's husband and decedent, was killed while operating a truck tractor on I-77, in Mercer County, West Virginia, owned by defendant Kaplan Trucking Co.

3. Lester Walker was survived by his wife, Tracy Walker, and their son, Brandon Walker. Lester Walker was likewise survived by eight brothers and sisters, Teri Bartley, Bob Walker, Shelli Walker, Leslie Jaeger, Robin Gallentine, Wendy Stimmel, Mike Seese and Rick Walker. There are no other known potential statutory beneficiaries to the Estate of Lester Walker.

4. At the time of Lester Walker's death on March 1, 2013, only petitioner Tracy L. Walker was financially dependent upon Lester Walker.

5. Petitioner has negotiated a proposed settlement of the Estate's wrongful death claims against the defendant, The Kaplan Trucking Company ("Kaplan"), in the amount of One Hundred Thousand Dollars (\$100,000.00).

6. Tracy Walker, individually, and in her Capacity as the Administratrix of the Estate of Lester J. Walker, believes the settlement proposed is just, fair and equitable under the circumstances.

7. Tracy Walker, individually, and in her Capacity as the Administratrix of the Estate of Lester J. Walker, understands that approval of the settlement and execution of the release herein will forever bar any further claims by the Estate and by any statutory beneficiary against defendant Kaplan, or prior defendant, Nucor Corporation, from the injury too and death of Lester J. Walker on March 1, 2013.

8. No improper promises, guarantees, threats, coercion or undue influence has been exerted upon Tracy Walker to accept the proposed settlement herein, and that the proposed settlement is a good faith settlement negotiated at arms-length among the parties.

9. Petitioner asserts there are no outstanding medical, funeral or burial expenses to be paid from the proposed settlement.

10. Petitioner entered into a contract with Bailey Javins & Carter, LC providing the payment of 40% of the proceeds as a fee for legal representation. Petitioner's counsel has agreed to reduce its fee to 33%, which totals \$33,000.00. Petitioner also agreed to pay the litigation expenses incurred in this matter, which total \$26,065.19. Petitioner understands that the attorney fees and litigation expenses must be deducted out of the total settlement proceeds, leaving \$40,934.81 as the total net settlement proceeds payable to the Estate.

11. All of the potential statutory beneficiaries of the Estate have been notified of the proposed settlement.

12. Previously, on February 14, 2017, the Court held a hearing and conditionally granted the Amended Petition, approving the attorney's fees and litigation expenses as set forth herein and in the Amended Petition, and conditionally awarded the total net settlement proceeds of \$40,934.81 to Petitioner Tracy Walker [Doc. 80]. At this hearing, the Court took the testimony of Petitioner, Tracy Walker. The Court and the parties learned at this hearing that three (3) of the decedent's adult sisters (Robin Gallentine, Shelli Walker and Wendy Stimmel) had mistakenly gone to the federal courthouse in Bluefield, West Virginia, instead of Charleston, West Virginia, where the hearing took place.

13. On February 15, 2017, the Court entered an Order conditionally granting the Amended Petition [Doc. 83]. The Court held that should there be no objections from other

putative beneficiaries within 15 days from the date of the Order, the Court shall confirm the granting of the Amended Petition [Doc. 80]. The Court provided notice to sisters Robin Gallentine, Shelli Walker and Wendy Stimmel that they must object to the settlement within 15 days if they wish to do so at all, by filing their objections in writing with the Clerk of this Court on or before March 2, 2017. [Doc. 80]. Failure to do so would result in confirmation of the settlement by the Court.

14. On February 28, 2017, decedent's three adult sisters, Robin Gallentine, Shelli Walker and Wendy Stimmel, filed their written objections to the settlement and proposed distribution set forth in the Amended Petition [Doc. 85].

15. On March 1, 2017, based upon the objections of the three (3) adult sisters, the Court entered an Order setting a second hearing on the Amended Petition for March 20, 2017, at 11:00 a.m. [Doc. 86]. The Clerk provided notice of the hearing and sent copies of the Court's Order to the three adult sisters, Robin Gallentine, Shelli Walker and Wendy Stimmel [Doc. 86].

16. Pursuant to its Order [Doc. 86], the Court conducted a second hearing on the Amended Petition on March 20, 2017 at 11:00 a.m. Present at the hearing were Petitioner, Tracy L. Walker, individually, and in her Capacity as the Administratrix of the Estate of Lester J. Walker, Jr., in person and by counsel, J. Ryan Stewart of Bailey Javins & Carter, LC, and attorney David A. Bosak of Lewis Brisbois Bisgaard & Smith, LLP, counsel for the defendant, The Kaplan Trucking Company. Despite being properly noticed, decedent's three adult sisters, who filed written objections to the proposed settlement, did not appear at the hearing. As a result, the Court confirmed the settlement as set forth in the Amended Petition [Doc. 80].

WHEREFORE, pursuant to West Virginia's Wrongful Death Act, W. Va. Code §55-7-7, it is, therefore, **ADJUDGED** and **ORDERED**:

A. That the One Hundred Thousand Dollar (\$100,000.00) settlement of the wrongful death claim against defendant, The Kaplan Trucking Company, as proposed in the Amended Petition, is hereby approved.

B. Petitioner is hereby authorized and directed to accept the sum set forth in the Amended Petition for settlement of all claims of the Estate of Lester J. Walker and the statutory beneficiaries of Lester J. Walker; and is further authorized and empowered to execute and deliver to the defendant all releases necessary to effectuate this settlement.

C. Upon execution of the settlement documents including a release, any other claims that Petitioner, the Estate of Lester J. Walker, or his testamentary and statutory beneficiaries, may have against defendant, The Kaplan Trucking Company, or prior defendant Nucor Corporation, related to the death of Lester J. Walker are forever barred and may no longer be pursued by them.

D. That all of the potential statutory beneficiaries of the Estate of Lester J. Walker have been notified of the hearing(s) to approve wrongful death settlement in this matter, and that other than Petitioner, Tracy Walker, none of the other potential statutory beneficiaries appeared at either of the two hearings to approve settlement, foregoing his/her right to make a claim for any of the net settlement proceeds.

E. Only Petitioner Tracy Walker demonstrated a financial dependence on the decedent, Lester J. Walker.

F. That the proceeds from settlement herein be distributed pursuant to the proposal set forth in the Amended Petition [Doc. 80], including payment for attorney's fees in the amount of \$33,000.00; payment of litigation costs/expenses in the amount of \$26,065.19; and payment of the total net settlement proceeds to Petitioner Tracy Walker in the amount of \$40,934.81.

G. Upon payment of the settlement aforesaid, defendant, The Kaplan Trucking Company, and prior defendant, Nucor Corporation, shall be forever discharged, released and acquitted from any and all claims, actions, suits and judgment arising from or relating to the injuries or death of Lester J. Walker.

H. The Court HOLDS that the compromise and settlement was negotiated at arms-length, was fair and reasonable, and is a good faith settlement within the meaning of West Virginia law. *See Hager v. Marshall*, 202 W.Va. 577, 505 S.E.2d 640 (1998), *Smith v. Monongahela Power Co.*, 189 W.Va. 237, 429 S.E.2d 643 (1993), *Board of Educ. of McDowell County v. Zando, Martin & Milstead, Inc.*, 182 W.Va. 597, 390 S.E.2d 796 (1990).

I. At the conclusion of the hearing on March 20, 2017, the Court announced its decision approving the settlement and distribution of proceeds in open court, and no objection to the approved settlement and distribution was made by any of the parties or potential statutory beneficiaries.

The Clerk of the Court is directed to provide certified copies of this Order, upon its entry, to all counsel and parties of record.

Counsel for the parties are directed to prepare for the Court's execution an appropriate Dismissal Order.

Entered this 22nd day of March, 2017.



DAVID A. FABER
Senior United States District Judge

Approved By:

s/ J. Ryan Stewart

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